IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/03/2004

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THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1297 of 1993

S. Thiagarajan .. Appellant

-Vs-

Commissioner
Karur Municipality
Karur .. Respondent

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree of the Sub Court, Karur, dated 22.12.1989 made in A.S.No.46 of 1988 reversing the judgment and decree of the Additional District Munsif Court, Karur in O.S.No.659 of 1983 dated 16.2.1987.

!For Appellant : Mr.S.Ashokkumar

^For Respondent : Mr.D.Krishnakumar

:JUDGMENT

Aggrieved over the judgment of the learned Subordinate Judge, Karur, made in A.S.No.46 of 1988, wherein the judgment of the trial Court, granting a decree in favour of the plaintiff, was reversed, the plaintiff has brought forth this appeal.

2. The plaintiff sought for a declaratory relief and consequential permanent injunction with the following pleadings:
The plaint Schedule mentioned house belonged to the plaintiff. On an application by the plaintiff before the first defendant, water connection was given to the plaintiff vide No.4941. The persons, who have got water connection with meter, should pay tax at Rs.8/- per month. But, the persons having meter, were paying the tax between Rs.8/- and Rs.90/-. At a particular time only, water was being supplied to these persons, including the plaintiff. The plaintiff was compelled to fix the meter. Accordingly, a meter wa s fixed by him. Since the water was being used for the household purposes, the municipality should collect the tax as per the tap rate system. Except the water connection as contemplated under Rule 3, the tax should be collected for the other connections, as per the tap rate system only. It was represented by the first defendant that the said Rule 3 was amended. But, the municipality has no power to amend the same. The persons having water connection with meter, can apply for tap system and get the connection after paying the

necessary charges, as per Rule 8(C). The defendants have violated the provisions of Sec.132(A) of the Tamil Nadu Municipalities Act. Since the water tax was paid in excess by the plaintiff, a notice was issued to the defendants. The first defendant sent a reply with false allegations. Thus, there arose a necessity for filing the suit for the above said reliefs.

3. The first defendant resisted the suit with the following pleadings:

The meter system was introduced in the year 1977, and objections were called for from the public. But, there were no objections on the side of the public, and thus, the meter system was implemented with the Government's sanction. Since the plaintiff has given an application under Rule 3, the drinking water was supplied to him under meter system. Rules 2 and 8(C) are not applicable to the plaintiff. There was no violation of the Rules, as alleged by the plaintiff, and hence, the suit was to be dismissed.

4. The trial Court framed the necessary issues, tried the suit and decreed the same. On appeal by the first defendant Municipality, the judgment of the trial Court was set aside and the suit was dismissed by the first appellate forum. Aggrieved, the plaintiff has brought forth this second appeal.

5. The following substantial question of law was formulated for consideration by this Court:

"Whether the finding of the courts below which was based on the wrong interpretation of the provisions of the bye-laws read with the Tamil Nadu District Municipalities Act is sustainable in the circumstances of the case?"

6. This court paid its full attention on the rival submissions made and had a thorough scrutiny of the materials available. This Court is of the considered opinion that the appeal carries no merits.

7. As could be seen from the averments in the plaint, the plaintiff has sought for a declaration that the first defendant municipality is not entitled to fix the meter in the water tap service connection of the plaintiff's house situated in his property and for a consequential injunction that the first defendant should be restrained from collecting more than Rs.8/- being the water charge as per the tap rate system. The plaintiff has come forward with these reliefs on the grounds that he was originally paying Rs.8/- under the tap rate system; that under compelled circumstance, a meter was fixed; that the rate was raised from Rs.8/- to Rs.90/-; that the water was taken by him only for the household purposes and for minimum use; that there are 4000 tap connections, out of which only 1000 were under the meter system; that he was aggrieved by the meter system and the collection made thereon, and hence, he was to be granted the said reliefs. From the available materials, it could be well seen that only on an agreement executed by the plaintiff for the supply of water, he was provided with the water supply by the first defendant municipality. As per the agreement, he has agreed to the course of water supply on meter system. Having applied for the same and executed the agreement in favour of the first defendant municipality, the plaintiff cannot now be permitted to say that the agreement has got to be dropped and he should be permitted to pay on the tap rate system of Rs.8/-. That apart, it is not in dispute that this meter system was introduced by the first defendant municipality in the year 1977, pursuant to the resolutions passed in the Council, and in view of the powers conferred on them. It is also not in controversy that the plaintiff pursuant to the agreement executed in favour of

the municipality, has been paying the present rate for more than 3 or 4 decades. Having been a party for an agreement and having paid the amounts all along the years, the plaintiff has come forward with the instant suit only to wriggle out of the procedures and to get the relief, which is not available for him in law. The first appellate Court was perfectly correct in rejecting the case of the plaintiff. Without considering the evidence, the trial Court has granted the relief, which has been rightly set aside by the first appellate Court. There is nothing to interfere in the judgment of the lower appellate Court.

8. In the result, this second appeal is dismissed, confirming the judgment and decree of the first appellate Court and leaving the parties to bear their costs.

Index: yes
Internet; yes

To:

1. The Subordinate Judge
Karur
2. The Additional District Munsif
Karur
3. The Record Keeper
V.R. Section, High Court, Madras.
nsv/

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